



City of Seattle
Michael McGinn, Mayor

Department of Planning and Development
D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3006654
Applicant Name: J Carey Jackson
Address of Proposal: 1385 33rd Avenue South

SUMMARY OF PROPOSED ACTION

Land Use Application to allow a 289 square foot deck in the required front yard and to exceed lot coverage.*

*(The need for a variance for lot coverage was discovered during project review and was not part of the original project description.)

The following approval is required:

Variance - to allow a deck higher than 18 inches above grade in the required front yard (SMC 23.44.014.D.11) and to allow lot coverage greater than allowed for this size lot (SMC 23.44.010.C).

SEPA DETERMINATION: ☒ Exempt ☐ DNS ☐ MDNS ☐ EIS
 ☐ DNS with conditions
 ☐ DNS involving non-exempt grading or demolition, or
 involving another agency with jurisdiction.

BACKGROUND DATA

Site and Vicinity Description

The approximately 4,452 square foot site is located in a Residential Single Family 5000 zone (SF 5000) on the west side of 33rd Avenue South. The site also has frontage on two segments of South Day Street, which form the site's north and south property boundaries; both rights-of-way (ROW) are not open to vehicles. The South Day Street ROW to the north contains a public pedestrian stairway connecting 32nd and 33rd Avenues.



The south half of this ROW has been used by the applicant as a private yard without City permits. The South Day Street ROW to the south is not open to the public and substantially used by the applicant as a private yard, also without City permits. (The applicants are currently working with the Seattle Department of Transportation – SDOT- to receive annual street use permits for temporary use of these ROW's as required by the City.)

The site is on the down-slope that extends from 31st Avenue South to Lake Washington. The majority of the site's topographic descent is in its western and eastern portions while the existing single-family structure is located in the central relatively level portion. The single family structure, constructed in 1909, is set-back approximately 15.5 feet from the 33rd Avenue ROW and is approximately 12 feet above the 33rd Avenue sidewalk elevation.

The surrounding area is similarly zoned Single-Family 5000 and contains a variety of ages and styles of single-family residences. Many of the surrounding parcels and structures are non-conforming to current SF 5000 lot sizes and development standards because they are either less than 5,000 square feet, have yards smaller than required or have lot coverage greater than the maximum amount allowed.

Proposal Description

The application requests *Variances* from Land Use Code standards that: prohibit a deck in a required front yard from extending more than 18-inches above grade, and to exceed the allowed lot coverage, which is caused by the substantial portions of the deck that exceed 36-inches above grade. The Single-Family zone development regulations allow decks in front yards, regardless of the current or resultant lot coverage, provided they do not exceed 18-inches above grade (exclusive of hand railings). Decks 36-inches above grade or lower do not count toward lot coverage.

A deck has already been constructed without receiving Variance approval. The deck, as built, extends from the floor level of the daylight basement level of the house. It is accessed through two pairs of French (double) doors that swing outward over the deck from the house's basement level. These were apparently added as a part of the deck addition. At its south end, the deck extends from the house approximately 6 feet 8 inches where it then extends at a diagonal northeastward approximately 17.5 feet and parallel to the existing walkway connecting the house and the street. At this point it then turns directly northward to parallel the house for approximately 16 feet. At this point the deck extends 11 feet 10 inches from the house. Where the deck attaches to the house it is approximately one-foot above grade. At its outward edges the deck is approximately 3 to 4 feet above grade at its 6 foot 8 inch extent and then increases to approximately 7 to 8 feet at the outermost parallel edge and north side. The applicant requests the retention of the deck as built.

Background: Construction of the deck began without a required building permit and was ordered to stop by the City building inspector in October 2006. Subsequently a NOV (Notice of Violation) was issued by the City requiring the deck to obtain necessary permits and be sited and constructed in accordance with City Zoning and Building Codes. At this time only the deck surface and post supports had been constructed along with the two pairs of French Doors. A land use application to allow the deck was initiated in January 2007 but was rejected due to being incomplete. A land use variance application was finally complete and accepted in October 2009. Between the time of the NOV and the accepted variance application deck construction continued and railings, an arbor, and skirting of horizontal lap siding were added.

For clarity and simplicity throughout the remainder of this document “proposed deck” will be used in lieu of either “the deck” or “the existing deck”

Public Comments

The two week public comment period was scheduled to end November 25, 2009 but was extended two weeks by public request. During that time one telephone comment was received that expressed concern about granting a variance in this situation for a property that was not particularly unusual considering the surrounding parcel sizes, topography, and structure locations. The commenter expressed that doing so would then open all properties in the area to obtaining variances from the Land Use Code and thereby effectively do away with neighborhood wide / area wide standards. The commenter also questioned why the applicants are permitted by the City to use City ROW for private yard areas.

Four comment letters were submitted by the applicant with the variance application. All unanimously supported the variance request and generally expressed that the deck was not out of character with the neighborhood, would improve the appearance of the east side of the house and that the site’s topographic conditions warrant development standard flexibility.

ANALYSIS - VARIANCE

As provided in SMC 23.40.020, variances from the provisions or requirements of Seattle Municipal Code Title 23 shall be authorized only when all of the facts and conditions stated in the numbered paragraphs below are found to exist:

- 1. Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity.***

The applicant offered several unusual site conditions in their response to this criterion:

- The house was built prior to the current set-back (yard) restrictions,
- It sits on a small lot and on a hill facing east and overlooking the lake,
- The house has a small footprint and unusual orientation, and
- The undeveloped portion of the lot (rear yard) does not allow space for enjoyment of the (lake and territorial) views.

The applicant states that many other properties in the surrounding neighborhood enjoy the right or privilege of having lake and mountain views and morning sun exposure due their location on the neighborhood’s eastern down-slope that extends from 31st Avenue South to Lake Washington. Some have these from the back of their houses (properties on the east side of surrounding streets, hence in their rear yards) or from the front of their houses (properties on the west side of surrounding streets, hence in their front yards). The only place for the applicant to have this is from a deck as built in their front yard. Further many properties have garages, fences, porches, decks or houses abutting the sidewalk or within 10-feet of the sidewalk. Accordingly, the applicant contends that the proximity of structures to the sidewalk is somewhat of a neighborhood norm.

The DPD planner conducted a site visit to the subject site and the surrounding neighborhood, particularly to view the 33rd Avenue “streetscape” and development pattern to the north and south of the site. Observations from that visit are:

- The existing residence has a 1,672 square foot footprint, giving it lot coverage 4 square feet above the allowed 1,668 square feet for this sized lot.
- The main floor and basement living areas along the house’s east side have unobstructed views to the east and Lake Washington. The partial second floor also has these views.
- The main floor living area along the house’s south side has unobstructed views to the lake by virtue of facing the undeveloped Day Street ROW to the south, which has been converted to the applicant’s private yard and includes a deck in addition to the proposed deck.

The subject property has some unusual conditions not created by the owner or applicant:

- The front yard is steeply sloped from the daylight basement floor level to the ROW, descending approximately eight to ten feet;
- The lot size is 4,452 square feet in a SF 5000 zone; and
- The single family structure, which was constructed around 1909, is located approximately 15.5 feet from the front property boundary with the 33rd Avenue South ROW.

The 33rd Avenue development pattern and streetscape displays these characteristics:

- Lots along the west side of 33rd Avenue rise above the street level similar to the subject site, hence many structures are above street level. Lots along the east side of 33rd Avenue are at grade for mostly one-half their depth before descending downhill. Hence many structures are located at street level.
- Some structures may have less than the current required front yard, although this is not predominant. (An analysis of each property’s front yard depth was not provided with the application. The surrounding structures vary in age and hence will vary in their yard requirements at their time of construction. Few if any, even those built under the current Code, would have to provide a 20-foot yard since the front yard depth is based on 20 feet or the average of the yards on either side, whichever is less. The intent of the averaging provision is to assure the continuation of a consistent streetscape.)
- Some structures that appear to be non-conforming to the current front yard requirements have access stairways in their front yards, but not decks. Some structures have decks but these appear to be conforming to Code requirements and are set-back far from the property edge and usually partially screened by landscaping. Two photos submitted by the applicant as examples of decks similar to the proposed appear to be illegal structures; by their appearance they were built since Title 23 became effective and there is no record of DPD permits.
- The applicant’s deck extends closer to the sidewalk / further into the front yard than any other structure seen on this street. The deck sits much higher above the grade below than others in the vicinity. The deck clearly stands out from the surrounding streetscape pattern.

DPD Analysis: There are two purposes of the Single Family zone front yard requirements that are germane to this request. The front yard assures structures are set-back a certain distance from the ROW to create a consistent neighborhood streetscape character (relationship of buildings to the street) and to provide an area for private outdoor activity and interaction with the neighborhood that is between the structure and street. Reasonable maintenance of these two purposes must be included when considering a request to vary from them. However, the front yard set-back requirements are written for general application to all lots in the City, most of which do not have steeply sloped front yards.

There are some unusual conditions that should influence consideration of this variance request, although only one that the applicant asserts. The steep front yard, although normal for the vicinity, is too steep to use for private outdoor activity without some sort of leveling, such as a deck. The amount of front yard slope (66 percent based on a 10-foot drop over 15.5 feet) prohibits locating a deck in the front yard except within approximately 4.5 feet from the house. The house footprint cannot be considered small as it exceeds the allowed lot coverage for a 4,452 square lot, which itself is 89 percent of the minimum lot size for the SF 5000 zone and not unusual for this vicinity or many others in the City. The house's front yard is only one-half foot shorter than the required 16-foot depth, which is also not unusual. The house orientation is not unusual, or disadvantageous for views as observed during the site visit. The rear yard may not have space for a deck with a full lake view but the southern portion does have a view to the lake and mountains across the property's side yard and undeveloped South Day Street ROW. The 32-foot rear yard exceeds the current Code required 17-feet. One unusual condition not mentioned by the applicants is their current unobstructed views from their side yard deck and use of the South Day Street ROW as a yard.

The strict application of the Code's prohibition on front yard decks more than 18-inches above grade does prevent the applicant from constructing a functional deck in the front yard; the 18 inch height limit would be exceeded at approximately one to two feet from the foundation. The front yard slope is so great it is not possible to stand on it without difficulty. This is the controlling factor in prohibiting its use for any reasonable outdoor activity.

But the presence of the deck as built has negative consequences for the other relevant purpose of the front yard requirements. By its proximity to the property line and height above the sidewalk and street the deck disrupts an established streetscape character of houses with relatively uniform front yards. The consistent depth of these front yards has also allowed room for frequent and extensive landscaping that screens structures (residences, decks, etc) and thereby reduces the scale of these structures located well above street level as seen and experienced from the sidewalk and street. The proposed deck height of approximately 7 feet above the grade below, and even further above the sidewalk grade approximately 6 feet away, (not including the 3-foot railing) visually intrudes into the established openness of the street and particularly towers above the sidewalk level. Because of these impacts, the permission to locate a deck as built is beyond the limitations for other properties in the vicinity and therefore cannot be considered one of the rights and privileges of these properties, or this property.

However, some level of relief from the site's unusual condition and related restrictions appears warranted and is discussed in the criteria below.

2. *The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located.*

The extent of the requested deck above the allowed deck height in a front yard goes beyond the minimum necessary to afford relief from the restrictions on this front yard's usage caused by its unusual sloped condition. However, protecting the established 33rd Avenue and vicinity streetscape character could be achieved with some deck provided the resultant design does not overly intrude into the established streetscape setback or tower above the sidewalk below.

Examination of the site topography to determine an appropriate location for termination of a deck indicates that a deck extending no further than the existing deck's southeast corner (shown on the submitted plans as 6 feet, 8 inches) along with landscape plantings could respond to this criterion and the above goals. The intent of the landscaping is two-fold: to attractively screen the underside of the deck or deck skirting as seen from the street and to create a visual progression of scale up the hill from the sidewalk to the deck elevation, thereby reducing the towering affect of a deck structure close to the ROW and extending above it. The permitted deck would conform to the existing deck details, such as deck surface level and design and height of railing, unless modified with the consent of the land use planner.

A 6-foot 8-inch deck would partially exceed 36 inches above grade and thereby be counted toward lot coverage. The site's allowed 1,668 square foot lot coverage without the deck is already exceeded by 4 square feet. The portion of a 6-foot 8-inch by 32 foot 7 inch deck (approximately 217 square feet) that would exceed this height limit is approximately 54 square feet, and hence would exceed existing lot coverage by this amount.

With the above details and specifications as ***Conditions*** a deck at a maximum 6 foot 8 inch depth and exceeding a 36-inch height above grade by approximately 54 square feet (but no extending no further than 6 feet 8 inches) would not go beyond the minimum necessary to afford relief nor constitute a grant of special privilege inconsistent with the limitations on other properties in this zone and vicinity.

3. *The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located;*

Based on the above discussion of the negative effects of the deck as built but mitigated by the ***Conditional*** approval of a reduced size deck along with landscaping, there will be no material detriment or injury to the public welfare or vicinity's property or improvements.

4. *The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would cause undue hardship or practical difficulties;*

The Single Family Code front yard provisions apply to lots of many varying sizes, shapes, and topography. As such, they have been partly written for a generalized 5,000 sq. ft. lot and often do not take into consideration many unusual conditions, such as the difficulty of deck placement in steeply sloped yards.

The Land Use Code does allow the construction of retaining walls and bulkheads up to 6-feet in height to raise grade in a required yard. No information was provided by the applicant that this option was considered as a way to achieve a more usable front yard. DPD has considered that option as a part of this undue hardship and practical difficulty analysis.

The top of a bulkhead / retaining wall for this purpose would need to be roughly at the structure's basement floor level or could be below floor level and connected to the basement by stairs. Without stairs, a six foot height limitation would place the retaining wall approximately 9-feet away from the house. With stairs the wall would have to be further from the house than without stairs to provide room for the stairs and any landings. Because of the existing diagonal walkway, the wall would have to be located between the walkway and the house as it paralleled the walkway, similar to the shape of the current deck. A safety guardrail no higher than 42 inches is allowed at the top of the way. A fence could be built for the same purpose but must be set-back 3 feet from the top of the wall.

Because of the steep slope nature of the front yard, an allowed retaining wall would require extensive excavation for footings and greater than typical engineering and design standards and costs. Keeping the wall height at 6 feet would also severely constrain the resultant amount of usable space. In this particular situation, DPD considers undertaking these measures to achieve the same result as a limited deck an undue hardship for the applicant (e.g.: the costs associated with engineering and construction) and could likely pose practical difficulties (e.g.: the required slope disturbance for excavation would involve stability of the existing structure uphill).

Precluding the construction of a front yard retaining wall for the reasons given above, many characteristics of the subject lot, as described above, do create practical difficulties for a fuller use and enjoyment of its yard areas. Approximately one-half of the rear yard is too steeply sloped for practical use. The side yards are minimal for activity areas (six and eight feet respectively for the south and north sides). The front yard now does not allow some outdoor use because it is too steeply sloped. Consequently, the Director finds that strict application of the applicable Code provisions would cause unnecessary hardship.

5. *The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use regulations for the area.*

The Land Use Code provides for a variance process for relief from unusual conditions and situations that the rules of the Code could not anticipate. At the same time, an intent and purpose of the Code is to assure compatibility of uses within a zone and preservation of neighborhood character.

The unusual steep slope of the subject site's front yard was not made by the applicant. The generalized development standards for this Single-Family zone were not written to take into account this type of unusual condition.

Based on the information and facts in the criteria responses above, DPD finds that permission to construct a limited deck in the front yard would grant minimum relief from the hardship and difficulties of the site's unusual conditions and be compatible with the other uses in the vicinity and zone. As such, this permission would be consistent with the spirit and purpose of the Land Use Code and regulations.

DECISION - VARIANCE

Based on the above findings and analysis all of the facts and conditions stated in the numbered criteria of SMC 23.40.020, *Variances*, are found to exist, therefore:

Variances to:

- Allow a deck higher than 18 inches above grade in the required front yard (SMC 23.44.014.D.11) and
- Allow a portion of a deck (approximately 54 square feet) that will be higher than 36 inches above grade to exceed maximum lot coverage for this size lot (SMC 23.44.010.C)

are **CONDITIONALLY APPROVED**.

CONDITIONS – VARIANCE

For the Life of the Project

1. A deck may extend into the front yard from the structure's foundation no further than 6-feet 8-inches and no further north or south than its current extent at the structure's existing north and south foundation walls.
2. Deck shall have fascia and railing details similar to those existing.
3. The area between the allowed deck and existing walkway shall be planted with a variety of attractive evergreen ground covers and shrubs that screen the deck's underside of skirting and create a transition in scale between the deck and sidewalk elevations. Landscaping shall conform to the applicable sections of DPD Director's Rule 6-2009, including requirements for plant size and long term maintenance.

Prior to MUP Permit Issuance

4. Update the MUP plans to show a deck and includes a landscape plan that conforms to the above **Conditions**. The revised plans will be reviewed for approval by the DPD land use planner prior to MUP permit issuance.

Prior to Building Permit Application (Intake Appointment)

5. The submitted building permit plans shall conform to the MUP approved plans.

Prior to Building Permit Final

6. After installation of the required landscaping it shall be inspected by DPD's land use planner for conformance to the approved MUP plans and building permit.

Signature: (signature on file)
Art Pederson, Land Use Planner
Department of Planning and Development

Date: January 14, 2010